

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action No. 1:17-cv-603

COLLEEN MCCLEAN,

Plaintiff,

v.

DUKE UNIVERSITY, SHEILA
BRODERICK, STEVEN THOMAS
BISHOP,

Defendants.

**DUKE UNIVERSITY'S MOTION TO
DISMISS**

Fed. R. Civ. P. 12(b)(6)

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Duke University ("Duke"), through counsel, hereby moves the Court to dismiss all of the claims against Duke by Plaintiff Colleen McClean, with prejudice. For the reasons stated below, and as specifically addressed in the accompanying Memorandum in Support of this Motion, Plaintiff's Complaint fails to state any claim upon which relief may be granted.

1. On May 15, 2017, Plaintiff filed a complaint against Duke in Durham County Superior Court, purporting to assert six (6) causes of action: (1) Interference with Civil Rights," pursuant to N.C. Gen. Stat. § 99D-1, premised entirely upon alleged violations of Title IX; (2) "Breach of Educational Contract;" (3) "Unfair or Deceptive Trade Practices," pursuant to N.C. Gen. Stat. §§ 75-1.1, et seq.; and (4) "Intentional Infliction of Emotional Distress;" (5) "Negligence;" and (6) "Negligent Infliction of Emotional Distress."

2. Plaintiff alleges that she was sexually assaulted by Defendant Steven Thomas Bishop, whom Plaintiff later discovered was dating Defendant Sheila Broderick. (Complaint ¶¶ 15-16.) At all relevant times, Ms. Broderick is the Gender Violence Interventions Services Coordinator for Duke. (*Id.* ¶ 16.)

3. The allegations in the Complaint and documents properly before this Court demonstrate that Plaintiff has not stated a credible claim for relief under N.C. Gen. Stat. s 99D-1 against Duke: Plaintiff did not allege interference with a constitutional right or facts from which one could reasonably infer acts of conspiracy participated in by Duke. *See* N.C. Gen. Stat. § 99D-1.

4. Further, Plaintiff does not sufficiently allege the existence of a contract between Plaintiff and Duke or its terms.

5. Additionally, Plaintiff's Complaint does not state a claim for relief under Chapter 75, as Plaintiff did not allege facts from which one could reasonably infer that Duke's actions were in or affecting commerce. *See* N.C. Gen. Stat. § 75-1.1.

6. Plaintiff also fails to allege "severe emotional distress" under North Carolina law, which bars her claims for intentional infliction of emotional distress and negligent infliction of emotional distress, nor does she sufficiently allege "extreme and outrageous conduct" sufficient to state a claim for intentional infliction of emotional distress under North Carolina law.

7. Plaintiff fails to sufficiently allege a cause of action for negligence under North Carolina law.

WHEREFORE, for the foregoing reasons, as more specifically stated in the accompanying Memorandum in Support of this Motion, Defendant Duke University respectfully requests that the Court grant this Motion, and dismiss all of Plaintiff's claims against Duke with prejudice, and grant all other relief that the Court deems just and proper.

This the 3rd day of August, 2017.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed a copy of the foregoing *Duke University's Motion to Dismiss* with the Clerk of Court using the CM/ECF system which will send electronic notification to the following CM/ECF participants:

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This the 3rd day of August, 2017.

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